No. 96-1584

In the

Supreme Court of the United States

October Term, 1996

TERRY CAMPBELL,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ of Certiorari
To the Louisiana Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a white defendant has standing under *Rose v. Mitchell*, 443 U.S. 545 (1979), to bring an equal protection claim based upon the exclusion of blacks from service as state grand jury foremen?

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STATEMENT OF THE CASE

On February 4, 1992, petitioner Terry Campbell, a white male, was indicted by the Grand Jury of the Thirteenth Judicial District, Parish of Evangeline, State of Louisiana, in the shooting death of James L. Sharp, also a white male, on January 11, 1992; petitioner was formally charged with second-degree murder in violation of La. R.S. 14:30.1 under Docket No. 45-690-F. (*See* Record at 19-20, hereinafter R. at __). The Honorable Preston Aucoin, Judge, Thirteenth Judicial District, Parish of Evangeline,

signed an arrest warrant and supporting affidavit for petitioner the same day of the shooting, which further ordered "that Gary Ortego, Attorney At Law, be (sic) and he is hereby appointed to represent Terry Campbell, said representation to began (sic) immediately (sic) and to cover all aspects of these proceeding (sic)." R. at 21-22, 317-318, 333-334. During petitioner's first trial in January 1994, and at the request of defense counsel, J. Michael Small, the trial judge explained to the jury the unusual order in the arrest warrant as being given because, at the time of his arrest, petitioner was a patient at a psychiatric hospital. (R. 542-545.) See *Appendixes at G-1* (hereinafter *App. at ___*). The arresting officers made no attempts to contact Mr. Ortego; however, Evangeline Parish Sheriff's Investigator Jack Aucoin read the warrant to petitioner including the language referencing the appointment of Mr. Ortego. (R. 339)

During transportation from Lafayette, Louisiana, to Ville Platte, Louisiana, and after being orally advised of his rights twice under *Miranda v. Arizona*, 384 U.S. 436 (1966), petitioner made certain spontaneous statements in the presence of Pine Prairie Police Chief L.C. Deshotel and Investigator Aucoin.[1] (R. 316, 318, 337)

[1] While being transported from Lafayette to Ville Platte, petitioner made the following spontaneous statements in the presence of Officer Deshotel and Investigator Aucoin: at approximately 5:40 p.m., petitioner stated: "I sure made a big mistake." At approximately 5:45 p.m., petitioner stated: "What would you do if someone tried to pass on you with a van?" At approximately 5:50 p.m., petitioner stated: "I told Dr. Cole that I wish it was me, not that man." At approximately 6 p.m., petitioner stated: "Where's my gun? Mr. L.C., do you know where my gun is? Boy that 357 is a nice shooting gun." At approximately 6:15 p.m., petitioner stated: "I just jumped out of the way; he tried to run over me, so I shot him. All I wanted to do was talk to the man, but he tried to run over me. I am sorry for what I did. I only wanted to scare him, not kill him." (R. 44-45) At 6:45 p.m. petitioner executed a written *Miranda* rights form at the Evangeline Parish Sheriff's Office. (R. 48, 320-321, 378-379)

Petitioner indicated he understood his rights, declined to make any statements, and was not subjected to interrogation. (R. 319-320) On May 28, 1992, then-defense counsel Mr. Small filed a *Motion To Suppress Inculpatory Statements* asserting that the spontaneous statements violated petitioner's Fifth Amendment right against self-incrimination and that because of a mental defect, petitioner could not knowingly, voluntarily and intelligently waive his Fifth Amendment right. (R. 58-59)

Petitioner was initially arraigned on the second-degree murder indictment on March 6, 1992, and entered a plea of not guilty. By formal written motion, defense counsel on June 2, 1992, motioned the trial court to change the plea from not guilty to not guilty and not guilty by reason of insanity. (R. 61-62) Petitioner was once again arraigned on July 16, 1992, at which time the State of Louisiana, then represented by former Assistant District Attorney Richard Vidrine, on behalf of former Thirteenth Judicial District Attorney J. William Pucheu, moved for the appointment of a sanity commission. (R. 3) In a formal order signed on July 16, 1992, Judge Aucoin appointed Drs. Phillip Landry and Charles Fontenot "to make an examination as to the defendant's mental condition at the time of the alleged offense, the defendant's present capacity to proceed, the defendant's capacity to understand the proceedings against him, the defendant's ability to assist in his defense, and his need for inpatient hospitalization in the event he is found incompetent." (R. 64) Following a hearing on January 8, 1993, the State and the defense stipulated to the introduction into evidence of the reports

filed by Drs. Landry and Fontenot. (R. 250) The trial court then concluded that petitioner was in need of further evaluation and ordered that petitioner be "committed to the Feliciana Forensic Facility at Jackson, Louisiana, as an inpatient, for treatment and psychiatric evaluation concerning his mental capacity to proceed in this case, as well as his mental condition at the time of the alleged offense..." (R. 74, 250-253)

In a letter dated April 6, 1993, officials at the Feliciana Forensic Facility (FFF) notified the trial court that petitioner was competent to proceed. *See App. at E-1 through E-3.* The trial court thereby issued an order on April 7, 1993, finding the State and the defense had stipulated to the FFF reports, which had determined petitioner "is presently able to understand proceedings against him and to assist in his defense". Accordingly, the trial court ordered petitioner returned to court for further proceedings. (R. 76). Upon motion of the State, and over the objection of the defense, the trial court then ordered Drs. Richard L. Gibson and Jay C. Pennington to examine petitioner as to "defendant's mental condition at the time of the alleged offense." (R. 86-87)

On December 2, 1993, Mr. Small, on behalf of the defendant, filed a motion entitled *Supplemental Motion To Suppress* claiming that the spontaneous statements should be suppressed as fruits of an illegal arrest. (R. 172-173) A hearing was held on petitioner's motion to suppress and supplemental motion to suppress on December 2, 1993, and both motions were denied. (R. 175, 313, 398) *See also App.* at F-1 and F-2.

Prior to trial, petitioner, through defense counsel Jesse B. Hearin, filed a *Motion To Quash Grand Jury Indictment* in the trial court, alleging that the indictment was defective because "the grand jury foreperson selection

process in Evangeline Parish is discriminatory and violates the Sixth and the Fourteenth Amendment to the United States Constitution..." *See Petition For A Writ Of Certiorari* at Appendixes, F-2 and F-3 (hereinafter *Pet.'s App. at* ____) Following a hearing on the motion on December 2, 1993, Judge Aucoin denied the motion; subsequently the trial court issued a written judgment on December 6, 1993, confirming the denial of the motion to quash. *See Pet.'s App.* at G-1 through G-34, H-1 through H-2.

Petitioner's first trial in January 1994 ended in a joint motion for a mistrial. (R. 9-11) A second trial was held from May 9 through May 12, 1994. (R. 12-15) New counsel for the petitioner, Richard V. Burnes and Raymond J. LeJeune, filed *Defense Objections To Proffered General Jury Charges*, claiming, *inter alia,* that a definition of manslaughter should be omitted "for the reason that the case does not involve a manslaughter with a non-enumerated felony (that is, felony not enumerated in Article 30 or Article 30.1) or an intentional misdemeanor and there is no evidence or allegations that the defendant was resisting a lawful arrest." (R. 190-192) Defense counsel also objected to the trial court's jury charge regarding specific intent, and requested a special instruction. The trial court rejected both requests; the jury charge read to the jury was filed into the record. (R. 202, 203-217)[2]. A twelve person jury voted unanimously to convict as charged. (R. 218)

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[2] Defense counsel requested the following instruction on specific intent: "However, the specific intent must exist at the time of the killing for the offense to constitute second degree murder. An intent to kill or to commit great bodily harm existing either before or after the time of the killing is not sufficient to constitute second degree murder if it did not exist at the time of the killing." (R. 202)

On May 20, 1994, a hearing was held on defense counsel's *Motion For A New Trial* and *Motion For Post Verdict Judgment Of Acquittal* based upon, *inter alia,* the alleged defect in the grand jury indictment, the alleged erroneous ruling regarding petitioner's motions to suppress, and the alleged defective jury charges on manslaughter and specific intent. *See Pet.'s App.* at I-1 through I-8. Both motions were denied, and petitioner was sentenced to the mandatory term of life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. (R. 18, 227-232, 236-237)

During the appeal to the Louisiana Court of Appeal, Third Circuit, through defense counsel Mr. Burnes and Mr. LeJeune, petitioner again asserted as Assignment of Error No. 1, the trial court's denial of the motion to quash the grand jury indictment. Petitioner also objected to the denial of his motion for new trial on that same basis.

In *State of Louisiana v. Terry Campbell*, 651 So. 2d 412 (La. Ct. App. 3d Cir. 1995), the Louisiana Court of Appeal, Third Circuit, on March 1, 1995, in addressing petitioner's first assignment of error in Docket No. CR-94-1140, reversed the trial court's finding that petitioner, a white male, lacked standing to allege racial discrimination against blacks in the grand jury foreman selection process in Evangeline Parish. *See Id.*, 651 So. 2d at 413-414 and *Pet's. App.* at D-2 through D-5. The Louisiana Third Circuit had remanded the matter back to the trial court for an evidentiary hearing, finding that petitioner's statistical information was inadequate under *State of Louisiana v. Young*, 569 So. 2d 570 (La. Ct. App. 1 Cir. 1990), *writ denied*, 575 So. 2d 386 (La. 1991).[3] Given the ruling of

[3] The State of Louisiana also points out that petitioner's summarized data in his petition does not correspond exactly to the statistical data provided in the record. Compare Pet. at 13 to R.103 (Black Population for 3/31/82 is 4,591 in record; brief has it as 4,561.)

the Louisiana Third Circuit, that reviewing court did not reach petitioner's other assignments of error. *See Id.* and *Pet.'s App.* at D-5.

On March 31, 1995, the District Attorney for the Thirteenth Judicial District filed an application for writ of certiorari and review with the Louisiana Supreme Court; in an opinion issued on October 2, 1995, the Louisiana Supreme Court in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995), *reh'g denied*, 661 So. 2d 1374 (La. 1995), granted the State's writ application in Docket No. 95-K-0824, and subsequently reversed the prior ruling of the Louisiana Court of Appeal, Third Circuit, in *State of Louisiana v. Terry Campbell*, 651 So. 2d 412 (La. Ct. App. 3d Cir. 1995). The Supreme Court held that petitioner lacked standing under both the equal protection clause and the due process clause to bring a claim of racial discrimination in the selection of grand jury foremen under *Rose v. Mitchell*, 443 U.S. 545 (1979) and *Hobby v. United States*, 468 U.S. 339 (1984). *See also Pet.'s App.* at A-2 through A-8. The Supreme Court also remanded the case back to the Louisiana Court of Appeal, Third Circuit, for consideration of petitioner's remaining assignments of error. A petition for rehearing with the Louisiana Supreme Court was subsequently denied on November 3, 1995. *See Pet.'s App.* at K-1 and *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995), *reh'g denied*, 661 So. 2d 1374 (La.1995).

On January 31, 1996, petitioner filed a *Petition For A Writ Of Certiorari* with this Honorable Court under Docket No. 95-1240, seeking review of the Louisiana Supreme Court's ruling denying petitioner standing to bring a *Rose* claim. Pursuant to a request for assistance by

former District Attorney Pucheu, the Attorney General filed *Respondent's Brief In Opposition To Petition For Writ Of Certiorari*. On May 13, 1996, this Honorable Court denied the petition. *See Pet.'s App.* at C-1 and *Terry Campbell v. Louisiana*, __ U.S. ___, 116 S.Ct. 1673 (1996).

Meanwhile, while the first petition to this Honorable Court was pending, the Louisiana Court of Appeal, Third Circuit, denied relief on petitioner's remaining assignments of error, and affirmed petitioner's conviction and sentence, with the exception of a remand to the trial court to amend the court minutes to reflect that petitioner would be credited for time served. *See State of Louisiana v. Terry Campbell*, 673 So. 2d 1061 (La. Ct. App. 3d Cir. 1996), *reh'g denied*, (La. Ct. App. 3d Cir. 6/7/96). On January 10, 1997, under Docket No. 96-1785, the Louisiana Supreme Court denied petitioner's application for writ of certiorari and/or review. *See State of Louisiana v. Terry Campbell*, 685 So. 2d 140 (La. 1997) and *Pet.'s App.* at B-1.

On April 2, 1997, petitioner submitted to this Honorable Court the instant *Petition For A Writ Of Certiorari*. The newly elected District Attorney for the Thirteenth Judicial District, C. Brent Coreil, formally recused his office based upon petitioner's representation by former defense counsel, Raymond Lejeune, who is now an Assistant District Attorney. *See App.* at A-1 and A-2. The undersigned was appointed as prosecutor of record. *Id.* Given the fact that the State of Louisiana had previously filed *Respondent's Brief In Opposition To Petition For Writ Of Certiorari* in the same matter under Docket No. 95-1240, the State filed an appearance form and waiver on behalf of the State of Louisiana. By letter dated May 23, 1997, the Clerk of this Honorable Court, William K. Suter, notified the State that a response had been requested filed on or before June 23, 1997. *See App.* at D-1.

SUMMARY OF ARGUMENT

In opposing the instant petition for writ of certorari, the State of Louisiana contends that the Louisiana Supreme Court's decision in *State v. Terry Campbell*, 661 So.2d 1321 (La.1995) is consistent with prior decisions of this Honorable Court. Additionally, any conflict between the *Campbell* decision and decisions of the Eleventh Circuit, U.S. Court of Appeals is clearly explained by the fact that those federal decisions cited by petitioner pre-date *Hobby v. United States*, 468 U.S. 339 (1984), and their validity today is highly questionable. Further, any conflict between the Fifth Circuit in *United States v. Cronn*, 717 F.2d 164 (5th Cir. 1983) and those decisions of the Eleventh Circuit also arise in that the latter decisions pre-date the *Hobby* decision. Finally, if this Honorable Court decides to invoke its supervisory jurisdiction, the State of Louisiana would respectfully argue that such review should be limited to the only federal question properly before this court, i.e., whether a white defendant has standing under *Rose v. Mitchell*, 443 U.S. 545 (1979) to bring a claim under the equal protection clause that blacks have been excluded from service as state grand jury foremen. Petitioner has also claimed this Honorable Court's supervisory jurisdiction should be invoked to review the following: erroneous admission of spontaneous statements under the Fifth and Sixth Amendments; erroneous jury charges under the due process clause of the Fifth and 14th Amendments, insufficient evidence to support a conviction based upon petitioner's evidence of insanity at time of the crime, and an abuse of discretion by the trial judge in finding petitioner competent to proceed. Petitioner has flatly failed to

demonstrate to this Honorable Court how any of these lower state court rulings are inconsistent with any decisions of this Honorable Court and that supervisory review is necessary.

ARGUMENT

I. Louisiana Supreme Court's decision in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995), is consistent with decisions of this Honorable Court.

In the instant petition for writ of certiorari, petitioner once again claims that the Louisiana Supreme Court's decision in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995) is flatly inconsistent with this Honorable Court's decisions in *Peters v. Kiff*, 407 U.S. 493 (1972) and *Powers v. Ohio*, 499 U.S. 400 (1991). *See Petition For A Writ Of Certiorari* at 9 (hereinafter *Pet. at* ____)

The State of Louisiana contends that the Louisiana Supreme Court decision is correct when viewed in light of this Honorable Court's decisions, and that the Louisiana Supreme Court correctly rejected petitioner's invitation to expand *Powers* beyond the context of an equal protection attack to race-based exclusions of prospective petit jurors through the use of peremptory challenges. *See State of Louisiana v. Terry Campbell*, 661 So. 2d at 1324.

In *Powers*, this Honorable Court held that a defendant, regardless of his or her race, had standing under the equal protection clause to object to the raced-based exclusion of any prospective petit juror whether or not that defendant and the excluded juror shared the same race.

Moreover, in *Peters v. Kiff*, *supra*, a plurality decision, this Honorable Court held that a white defendant had standing to object on the basis of the due process clause to racial composition of a grand and petit juries even though the claim centered on the allegations that blacks had been systematically excluded.

Given the fact that this Honorable Court **has not decided** whether a white defendant has standing under *Rose v. Mitchell*, *supra*, to bring an equal protection challenge to alleged racial discrimination against blacks in the context of a state grand jury foreman, the Louisiana Supreme Court was correct not to extend *Powers* beyond its equal protection holding. This is especially true in light of the Louisiana Supreme Court's own determination of its state grand jury system that "[t]he role of the grand jury foreman in Louisiana appears to be similarly ministerial"[4] , which was the same conclusion espoused by this Honorable Court in *Hobby*, *supra*, 468 U.S. 339 (1984) concerning the role of a federal grand jury foreman. *See State of Louisiana v. Terry Campbell*, 661 So. 2d at 1324; and *Hobby*, 468 U.S. at 344. *See also State of Louisiana ex rel. Williams v. Whitley*, 629 So. 2d 343 (La. 1993)(Marcus, J., dissenting, "[t]he role of the foremen of the grand jury in Louisiana also appears to be ministerial in nature.")

Given the holdings of *Powers* and *Peters*, the Louisiana Supreme Court was without express binding authority from this Honorable Court to grant petitioner the relief he was seeking. Furthermore, the Louisiana Supreme Court's decision is also consistent with *Castaneda v. Partida*, 430 U.S. 482, 494 (1977)(Mexican-American

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[4] Whether or not the duties of a Louisiana grand jury foreman are ministerial would, in the first instance, be a question of state law best left for resolution by Louisiana courts. See La.C.Cr.P. art. 436. See also App. at H-5.

defendant had standing under the equal protection clause to object to the exclusion of Mexican-Americans as state grand jurors) and *Rose v. Mitchell*, 443 U.S. at 565, (black defendants had standing under the equal protection clause to challenge exclusion of blacks as state grand jury foremen)[5] in requiring that petitioner establish under the equal protection clause that the "procedures employed resulted in substantial underrepresentation of his race or of the identifiable group to which he belongs." Accordingly, the Louisiana Supreme Court's decision is consistent with decisions of this Honorable Court.

While petitioner portrays his claim as falling on all fours with the *Powers* and *Peters* decision, he continues to ignore the basic premise of the *Castaneda* and *Rose* decisions that the complaining party of the grand jury or grand jury foreman selection process demonstrates **"a substantial underrepresentation of his race or of the identifiable group to which he belongs**." (Emphasis added.) His complaint is that the Louisiana Supreme Court refused to establish a new federal rule. To the contrary,

[5] Petitioner continues to misconstrue the *Rose* holding by stating that in *Rose* this Honorable Court "held that racial discrimination in the selection of grand jury foremen violates the Fourteenth Amendment to the United States Constitution and requires reversal of a state conviction." *Pet.* At 15. While it is clear from the *Rose* decision that discrimination against blacks in the selection of grand jury foremen violates the equal protection clause of the Fourteenth Amendment, it is not clear that such discrimination warrants reversal of a subsequent conviction. This Honorable Court has never decided what the remedy would be, in that this Court in *Rose* held that the black petitioners had not established a *prima facie* case of discrimination, and therefore the attack failed. In *Rose*, this Honorable Court "assumed, without deciding, that invidious discrimination in the selection of only the foreman requires that a subsequent conviction be set aside, just as if the discrimination proved had tainted the selection of the entire jury venire." *Id.*, 443 U.S. at 551 n. 4 (Citations omitted)

petitioner must demonstrate to this Court under Sup.Ct. Rule 10 (c) that a state court "has decided an important question of federal law that has not been, but should be, settled by this Court..." The State of Louisiana responds herein that the Louisiana Supreme Court did not decide a new rule of federal constitutional law yet undecided by this Honorable Court. The Louisiana Supreme Court's expressly rejected petitioner's invitation to do just that. Instead, the Louisiana Supreme Court decided petitioner's case in a manner entirely consistent with the present decisions of this Court. For this reasons, petitioner has not established a basis for invoking this Honorable Court's supervisory jurisdiction.

II. A perceived conflict of the Louisiana Supreme Court's decision in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995), with *United States v. Sneed*, 729 F. 2d 1333 (11th Cir. 1984), does not, *ipso facto*, mean that petitioner is entitled to this Honorable Court's supervisory review, especially where the state court decision is consistent with prior Supreme Court decisions.[6]

[6] Petitioner cites *Bowen v. Kemp*, 769 F. 2d 672 (11th Cir. 1985), cert. Denied, 478 U.S. 1021 (1986), as a federal appeals decision that conflicts both with *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995 and *United States v. Cronn*, 717 F. 2d 164 (1983). *Pet.* At 11-12. The State of Louisiana fails to comprehend this argument given that in *Bowen*, the issue before the federal court revolved around an equal protection claim concerning the exclusion of women from petit jury service. The instant claim before this Honorable Court deals only with an equal protection claim based upon a state's grant jury foreman selection process. Petitioner had not ever claimed discrimination in the selection process of either state grand juries or state petit juries. Accordingly, a federal decision not on point with the instant claim could

Petitioner claims that the Louisiana Supreme Court decision in question here conflicts with *United States v. Sneed*, 729 F. 2d 1333 (11th Cir. 1984), and thereby, this Court should invoke supervisory review. *Pet.* at 3, 11. The United States Court of Appeals, Eleventh Circuit, in *Sneed* did not distinguish between discrimination in the selection of a state grand jury foreman and discrimination in the selection of a state grand jury itself. Rather, the Eleventh Circuit in *Sneed* dealt only with a federal defendant's claim against the federal grand jury foreman selection process, and subsequently extended holdings of this Honorable Court dealing with discrimination in the selection of grand juries to consider a claim of discrimination in the selection of grand jury foremen. Moreover, the *Sneed* court was bound by clear precedent in the Eleventh Circuit, *United States v. Holman*, 680 F. 2d 1340 (11th Cir. 1982) and *United States v. Perez-Hermandez*, 672 F. 2d 1380 (11th Cir. 1982) As argued below, all of these federal decisions were issued **prior** to *Hobby v. United States, supra*. Furthermore, there is no indication in *Sneed* that an issue before that federal appellate court was whether a white defendant could bring a claim of racial exclusion of blacks in a state grand jury foreman selection process. The *Sneed* decision clearly centered upon a federal defendant attacking his federal conviction due to alleged discrimination in the selection of federal grand jury foremen.

Most importantly, the Eleventh Circuit today may possibly retreat from this line of prior decisions given this Court's binding precedent in the *Hobby* case. *See Sneed*, 729 F. 2d at 1335 n. 3 (finding federal grand jury foreman

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hardly create the necessary "conflict" by which this Honorable Court invokes supervisory review pursuant to Sup.Ct.Rule 10.

to be constitutionally significant). Accordingly, given this Court's decision in *Hobby* on a due process claim concerning federal grand jury foremen, and this Court's decisions under the equal protection clause of *Castaneda* and *Rose*, there is no outstanding conflict that has not already been resolved.

Even if *Sneed* could be legitimately interpreted to conflict with the ruling of the Louisiana Supreme Court a conflict alone is insufficient in and of itself to grant supervisory relief. *See Ramirez v. California*, 476 U.S. 1152 (1986)(J. White, dissenting, joined by J.J. Brennan and Powell), wherein this Honorable Court denied a petition for writ of certiorari despite the opinion of dissenting Justices that a conflict existed between a Fifth Circuit Court of Appeals decision and a California Supreme Court decision, and between the latter decision and a Supreme Court decision. *See also Green Bay Packaging, Inc., v. Adams Extract Company*, 473 U.S. 911 (1985) (J. White, dissenting in the denial of a petition for writ of certiorari because of a conflict between decisions of the Fourth and Fifth Circuits of the United States Court of Appeals).

Accordingly, petitioner has failed to clearly demonstrate that relief is warranted on the basis that the Louisiana Supreme Court's decision is in direct conflict with Eleventh Circuit decisions.

III. Any perceived conflict between *United States v. Cronn*, 717 F. 2d 164 (5th Cir. 1983), *cert. denied*, 468 U.S. 1217 (1984) and other decisions of the United States Court of Appeals, Eleventh Circuit, disappears when one considers that the latter decisions pre-dated *Hobby v. United States*, 468 U.S. 339 (1984).

Petitioner further claims that review by this Honorable Court is warranted given that *United States v. Cronn*, 717 F. 2d 164 (5th Cir. 1983), *cert. denied*, 468 U.S. 1217 (1984),[7] conflicts with the following decisions of the United States Court of Appeals, Eleventh Circuit: *Bowen v. Kemp*, 769 F. 2d 672 (11th Cir. 1985), *cert. denied*, 478 U.S. 1021 (1986); *United States v. Perez-Hernandez*, 672 F. 2d 1380 (11th Cir. 1982)(*per curiam*); *United States v. Holman*, 680 F. 2d 1340 (11th Cir. 1982); and *United States v. Sneed*, 729 F. 2d 1333 (11th Cir. 1984). *Pet.* at 3, 11.

While these decisions, except for *Bowen* as previously explained *infra*, may appear to be in conflict with *Cronn*, all these decisions cited by the petitioner were issued **without the benefit of Hobby v. United States,** supra, and dealt with the issue of a federal grand jury foreman, not a state grand jury foreman. (See P. 15, n. 5 *infra*) In light of the *Hobby* decision, the continued validity of these Eleventh Circuit decisions is highly questionable. Accordingly, those same federal courts would be bound by the *Hobby* precedent. As such, intervention by this Honorable Court to resolve what the petitioner claims is an apparent conflict is clearly not necessary. An examination of the cited federal case law by the instant petitioner shows that the petitioner's claim of conflict is clearly illusory.

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[7] Petitioner also cites *James v. Whitley*, 39 F. 3d 607 (5th Cir. 1994), *cert. denied*, __ U.S. __, 115 S.Ct. 1704 (1995), as a "case involving issues similar to the case *sub judice*, the state conceded that the petitioner had established that blacks are a recognizable distinct class that receives different treatment under the laws as written or applied" *Pet.* at 17. Petitioner fails to mention to this Honorable Court that the habeas petitioner in *James* was black who was attacking the state grand jury foreman selection process in St. James Parish on a claim that blacks were unlawfully excluded from service. Therefore, standing was not an issue in the *James* case.

In *United States v. Perez-Herandez*, 672 F. 2d 1380 (11th Cir. 1982)(*per curiam*), decided on April 15, 1982, the Eleventh Circuit held that a hispanic defendant had standing under the equal protection clause to object to the exclusion of blacks and women from service as federal grand jury foremen. It is also noteworthy that the Eleventh Circuit in *Perez-Hernandez* also rejected the government's argument that the role of a federal grand jury person is "constitutionally insignificant." *Id.* at 1386. *Contrast Hobby*, *supra*, decided on July 2, 1984, finding the role of a federal grand jury foreman as simply ministerial and without constitutional importance. The Eleventh Circuit also placed heavy reliance on *Peters v. Kiff*, *supra*, even though that decision was based upon the due process clause as opposed to the equal protection clause.

In *United States v. Holman*, 680 F. 2d 1340 (11th Cir. 1982), decided on July 22, 1982, the 11th Circuit obviously felt bound by *United States v. Perez-Hernandez*, *supra*, when it held that a white defendant had standing to complain about the exclusion of blacks and women from service as federal grand jury foremen. That Court stated: "...The panel [in *United States v. Perez-Hernandez*] reached that conclusion [of standing] despite its acknowledgment of prevailing Supreme Court precedent which would appear to deny standing to such a defendant...In accord with our existing precedent, we find standing on the part of the instant appellants." *Id.*, 680 F. 2d at 1355-1356.

Likewise, *United States v. Sneed*, 729 F. 2d 1333 (11th Cir. 1984), decided on April 16, 1984, cites the binding precedent of *United States v. Holman* and *United States v. Perez-Hernandez* for its decision.

The State of Louisiana contends that petitioner has plainly failed to establish to this Honorable Court any viable conflict in the lower federal circuits. All the cited

Eleventh Circuit decisions pre-date the *Hobby* decision, and therefore have been resolved by this Honorable Court to deny a white petitioner standing on a *Rose* claim. Given the holdings of *Hobby*, *Castaneda* and *Rose, supra*, the federal appellate decisions cited by the petitioner fail to prove a jurisdictional basis by which a petition for writ of certiorari should be granted.

IV. If this Honorable Court should invoke its supervisory jurisdiction and review the Louisiana Supreme Court's decision in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995), such review should be limited to only the equal protection claim under *Rose v. Mitchell*, 443 U.S. 545 (1979).

Petitioner claims that the questions presented for review include three federal bases for relief: the equal protection clause, the due process clause and the fair cross-section requirement of the Sixth Amendment. *Pet.* at *i*. The State of Louisiana counters that the only possible federal question left unresolved for this Honorable Court is whether a white defendant has standing under *Rose* to bring an equal protection claim based upon the exclusion of blacks from a state's selection process for grand jury foremen.

Petitioner's claim that a white defendant has standing to bring a due process attack is foreclosed by this Court's decision in *Hobby, supra*. Considering the Louisiana Supreme Court's *dicta* that a Louisiana grand jury foreman's role is ministerial, petitioner's request for relief squarely runs counter to the *Hobby* decision. For the petitioner to distinguish *Hobby* based upon a claimed difference in the selection of a grand jury foreman in the

federal system as opposed to the selection of a grand jury foreman in the Louisiana system, clearly rings hollow when the petitioner himself has deliberately chosen not to attack the Louisiana grand jury venire from which his Louisiana grand jury was chosen. Moreover, the Louisiana Supreme Court in *State of Louisiana v. Mouton*, 395 So. 2d 1337 (La. 1981), *cert. denied*, 454 U.S. 850 (1981), upheld the state statutes governing the selection of grand juries in Orleans Parish, whereby the district judge picks each of the 12 grand jurors from the grand jury venire. In *Mouton*, the Louisiana Supreme Court affirmed that La.C.Cr.P. arts. 412, 413, and 414 and La.R.S. 15:114 do not violate the federal due process or equal protection clauses because the defendant had failed to establish an affirmative showing that the system was discriminatory. *See also App.* at H-2 through H-5. In the petitioner's case, applicable Louisiana statutes allow district judges of parishes other than Orleans Parish to chose only the grand jury foreman from the grand jury venire; the remaining 11 grand jurors and two alternates are picked randomly and by lot. *See App.* at H-4. In light of *Mouton*, petitioner's claim that allowing a district judge to select the grand jury foreman necessarily taints the grand jury itself has no merit. Moreover, the argument fails to account for petitioner's own decision to forego an attack on the Louisiana's system of selecting the grand jury itself. Accordingly, review on the due process claim should be denied.

Finally, petitioner claims he is entitled to federal review on a fair cross-claim analysis under the Sixth Amendment. The State of Louisiana counters that this federal claim has not been heretofore addressed by the state courts in question. A review of the record herein demonstrates that the state courts did not rule on petitioner's Sixth Amendment fair cross-section claim,

given the fact that the focus was on petitioner's standing to bring either an equal protection attack or a due process attack upon the grand jury foreman selection process itself. Further, the record before this Honorable Court does not demonstrate that the petitioner adequately represented a Sixth Amendment fair cross-section claim as an adequate basis for relief before the state courts. Given this Honorable Court's policy considerations that state courts should be given the first opportunity to consider the application of state statutes in light of federal constitutional challenges, this Court's review on this basis is not warranted. See Robert L. Stern *et al.*, *Supreme Court Practice* at 117 (7th ed. 1993).

Moreover, authority which petitioner himself cites to this Honorable Court notes in *dicta* that a grand jury foreman attack is not by its nature subject to the Sixth Amendment's requirement of a fair cross-section. *See Sneed, supra*, 729 F. ed at 1335 n.

> 2: "[a]lthough the composition of a grand jury or petit jury venire may be challenged under the sixth amendment's guarantee of a right to be tried by a group drawn from a source representing a fair cross-section of the community...this requirement does not extend to the office of grand jury foreperson because '[o]ne person alone cannot represent the divergent views, experience, and ideas of the distinct groups which form a community.' (Citations omitted.)"

As such, no reason exists to review petitioner's alleged claim under the Sixth Amendment fair cross-section requirement.

V. Petitioner has utterly failed to establish that the Louisiana Supreme Court's writ denial of the lower court's ruling in *State of Louisiana v. Terry Campbell*, 673 So. 2d 1061 (La. Ct. App. 3d Cir. 1996), *writ denied*, 685 So. 2d 140 (La. 1997) relied upon holdings inconsistent with decisions of this Honorable Court in order to justify supervisory review under Rule 10 (c).

A. Denial of petitioner's motions to suppress spontaneous statements under the Fifth Amendment:

Petitioner claims that this Honorable Court should grant his petition for writ of certiorari to review the denial of his motions to suppress his spontaneous statements under the Fifth Amendment. *Pet.* at *i.*, 18-20. He cites no authority to indicate that any lower state court ruling is inconsistent with decisions of this Honorable Court.

The Third Circuit for the Louisiana Court of Appeal ruled that the trial court had correctly denied petitioner's motion to suppress. *See Pet.'s App.* at E-9 to E-13 and *State v. Terry Campbell*, 673 So. 2d at 1066-1068. In so doing, the Louisiana Third Circuit correctly relied upon *Michigan v. Mosley*, 423 U.S. 96 (1975).

The Louisiana Third Circuit's ruling is clearly consistent with the *Mosley* decision. The record in this matter clearly shows that petitioner's inculpatory statements were made of his own volition and not in response to police interrogation. The Louisiana Third Circuit wrote: "Clearly under the precepts of Michigan v. Mosley, these officers scrupulously honored Campbell's right to cut off questioning. He cannot now assert that his right to remain silent was violated, because no further interrogation occurred. Campbell apparently changed his mind and voluntarily decided to make the statements at issue. Nothing

in Miranda prevents a defendant from changing his mind about giving a statement." *Id.*, 673 So. 2d at 1068.

The Louisiana Third Circuit also correctly ruled that petitioner's statements were knowingly, intelligently and voluntarily made. The record supports the Louisiana Third Circuit's finding that although defense expert Dr. Jimmie Cole testified petitioner was, in his opinion, mentally incompetent on the date of those statements, Dr. Cole also testified on cross-examination that petitioner signed a "formal voluntary admission" that same day when he was admitted to the hospital, and that a person "would not be admitted unless they had the mental capacity to make such" a voluntary admission. *Id.*, 673 So. 2d at 1067.

Moreover, the record supports the Louisiana Third Circuit's finding that petitioner had sufficient mental capacity to understand the rights as explained to him. Dr. Cole testified that petitioner also signed a consent form to surgery, that petitioner knew what was going on "to some degree", and that medication did not prevent petitioner's statements from being free and voluntary. (R. 359-361) Further, Dr. J.C. Pennington testified in his opinion that petitioner's statements were free and voluntary. (R. 370) This Honorable Court in *Colorado v. Connelly*, 479 U.S. 157 (1986) held that a confession can be free and voluntary even though an accused suffers from a mental defect. The State of Louisiana herein has freely acknowledged and could never dispute that petitioner suffers from organic brain damage due to an accident he suffered in 1986. However, as this Honorable Court and Louisiana courts have longtime recognized, an accused's mental illness or mental condition alone does not mean he can never give a free and voluntary
statement. *See Connelly, supra*, and *State of Louisiana v. Brown*, 414 So. 2d 689 (La. 1982).

Accordingly, review by this Honorable Court on petitioner's Fifth Amendment claims is clearly not necessary.

B. Denial of petitioner's motions to suppress his spontaneous statements under the Sixth Amendment:

Petitioner further claims this Honorable Court should invoke its supervisory jurisdiction to review a denial of his Sixth Amendment rights resulting from the admission into evidence of his spontaneous statements.

The record is clear on this point that petitioner's statements were made on the date of his arrest on January 12, 1992, and that formal charges were not brought until the date of his indictment on February 4, 1992. (R. 19-20, 316, 318, 337)

The Louisiana Third Circuit correctly ruled that petitioner's claim of error on this basis was flatly without merit, citing *Moran v. Burbine*, 475 U.S. 412 (1986), finding that the prosecution in the instant matter had yet to commence, and therefore, petitioner's rights under the Sixth Amendment has not yet attached. *See State of Louisiana v. Terry Campbell*, 673 So. 2d at 1068. The Louisiana Third Circuit ruling is also consistent with *Kirby v. Illinois*, 406 U.S. 682 (1972), wherein this Honorable Court recognized that the Sixth Amendment right to counsel only attaches at the point where adversarial criminal prosecution begins.

Accordingly, petitioner provides no support for a finding that the Louisiana Third Circuit's ruling on the Sixth Amendment claim is inconsistent with this Honorable Court's binding precedent. *Pet.* at 20-21. Supervisory

review is clearly not warranted.

C. Denial of petitioner's requested jury charges:

Petitioner again claims this Honorable Court should invoke its supervisory jurisdiction to review the Louisiana Third Circuit's ruling finding that the trial judge had correctly denied defense counsel's specific requests regarding jury instructions on specific intent and manslaughter. *Pet.* at *i.*, 27-29.

The Louisiana Third Circuit ruled that the trial court adequately charged the jury on the issue of intent, finding that the instructions, taken as a whole, were sufficient. *Id.*, 673 So. 2d at 1070. Because petitioner's defense to the crime was based on a lack of intent due to his alleged insanity, the Louisiana Third Circuit affirmed the trial court's denial of petitioner's objections.

This Honorable Court has recognized that a trial judge is required to give only instructions as to matters which are pertinent to the case at hand. *See Hopper v. Evans*, 456 U.S. 605 (1982); *Keeble v. United States*, 412 U.S. 205 (1973); and *Sansone v. United States*, 380 U.S. 343 (1965). In his brief, petition cites no authority to indicate that the lower courts' rulings on the claimed erroneous jury charges is inconsistent with *any* decision of this Court. Supervisory review again should be denied.

D. Petitioner's insanity claims:

Petitioner attempts to invoke the supervisory jurisdiction of this Honorable Court claiming his due process rights under the Fifth and Fourteenth Amendments were denied because the jury found him guilty as charged despite the evidence of insanity he presented at trial. *Pet.* at

ii., 22-27.

First, petitioner claims for the first time in the instant petition that the trial court and the Louisiana Third Circuit applied the wrong standard under La.C.Cr.P. art. 648, and that the statute is not unconstitutional in light of this Honorable Court's decision in *Cooper v. Oklahoma*, ___ U.S. ____, 116 S.Ct. 1373 (1996). *Pet.* at *ii.*, 22. However meritorious this argument may be, the simple fact remains that petitioner **has not presented this precise claim to the lower state courts.** Under La.C.Cr.P. arts. 924 and 930.8 (A), petitioner may present this claim in a state application for post-conviction relief, provided he meets the statutory requirements. Accordingly, this Honorable Court should decline to review petitioner's claim on the constitutionality of La.C.Cr.P. art. 648 as applied in his case given the fact that he has not presented that claim to state courts. *See Supreme Court Practice* at 90. Because this Honorable Court's supervisory jurisdiction is necessarily limited to final judgments of a state's highest court of last resort where a substantial federal question has been properly raised and necessarily decided upon, the context of petitioner's claimed unconstitutionality of La.C.Cr.P. art. 648 necessitates denial of review at this point. *See also State of Louisiana v. Frank*, 679 So. 2d 1365 (La. 1996)(on October 4, 1996, the Louisiana Supreme Court held that the clear and convincing evidence standard under La.C.Cr.P. art. 648 was unconstitutional in light of the *Cooper v. Oklahoma* decision.)

This Honorable Court has consistently deferred issues of federal law, in the first instance, to the state courts as a means to minimize federal intrusion into state affairs. *Supreme Court Practice* at 95. Furthermore, this Court has often recognized and insisted that state courts be allowed

the first opportunity to pass upon federal constitutional challenges to state action in the first instance, and that state courts, as their federal counterparts, are equally as competent in adjudicating federal constitutional claims. *See Allen v. McCurry*, 449 U.S. 90, 105 (1980)(confidence in state courts to adjudicate federal claims.) This Honorable Court has also adopted a policy of allowing state courts the opportunity to correct any possible constitutional violation caused by state action. *Picard v. Connor*, 404 U.S. 270, 277-278 (1971). The record in this matter, both from the trial court proceedings and the issues presented on appeal to the Louisiana Court of Appeal, Third Circuit, wherein the Louisiana Supreme Court denied petitioner's application for writ of certiorari, clearly does not include the claimed unconstitutionality of La.C.Cr.P. art. 648 as applied to the petitioner. Accordingly, petitioner has plainly failed to establish a basis for this Honorable Court's granting his petition for writ of certiorari on this issue.

Second, petitioner's main attack on the lower state court rulings regarding insanity centers upon his claim that the evidence at trial was not sufficient to support the jury's determination that petitioner was sane at the time he shots James L. Sharp. *Pet.* at *ii.*, and 22-27.

Despite petitioner's head injury and diagnosis of organic brain syndrome, the Third Circuit for the Louisiana Court of Appeal affirmed the trial court's ruling that petitioner was competent in that he could fully understand the consequences of the proceedings and he could assist in his defense. The Louisiana Third Circuit ruled that the final determination of petitioner's competency to stand trial is a decision for the trial court, and that such a determination of competency to proceed is entitled to great weight, and will not be disturbed on appeal unless petitioner established manifest error. *Id.*, 673 So. 2d at 1066.

On appeal petitioner claimed the trial court incorrectly denied his motions for new trial and for post verdict judgment of acquittal. *Id.*, 673 So. 2d at 1071. The Louisiana Third Circuit stated that in reviewing a motion for new trial, the trial judge must act as the thirteenth juror to review the weight of the evidence, and then determine whether he agreed with the jury's interpretation of the evidence. *See Id.*, 673 So. 2d at 1071-1072, citing *Tibbs v. Florida*, 457 U.S. 31 (1982). The Louisiana Third Circuit further held that on appeal, the trial judge's denial of a motion for new trial is reviewable only for an abuse of discretion. *Id.* The Louisiana Third Circuit also found that petitioner failed to present any evidence contesting the credibility of fact witnesses or law enforcement officials. *Id.* As far as petitioner's sanity at the time of the crime, the Louisiana Third Circuit ruled:

> We shall next consider whether the trial court abused its discretion by denying the motion for new trial as to ground number two, defendant's sanity at the time of the offense. The defense presented the testimony of five physicians, all of whom concluded that Campbell was incapable of distinguishing right from wrong at the time of the commission of the offense. Of these doctors, only Dr. Cole can be considered as having been Campbell's treating physician, having first treated him in 1986. The state, on the other hand, presented the testimony of four expert physicians who uniformly agreed that Campbell could distinguish right from wrong at the time of the commission of the offense. Clearly, therefore, the credible evidence and testimony conflicted on this issue.

The jury heard the opinions of nine experts, five for the defense and four for the state...When a defendant presents evidence establishing the defense of insanity at the time of the offense, the state is not required to offer evidence to rebut that presented by the defendant. Rather, the determination of whether defendant's evidence rebuts the sanity presumption is made by the trier of fact (in this case, the jury) viewing all of the evidence including expert and lay testimony, defendant's conduct, and his actions in committing the particular crime...As stated, in considering a motion for new trial, the trial judge, as the thirteenth juror, must apply these same rules to his evaluation of the evidence. *Id.*, 673 So. 2d at 1072-1073.

In reviewing petitioner's claim that his motion for post-verdict judgment of acquittal was erroneously denied, the Louisiana Third Circuit corrected ruled consistent with *Jackson v. Virginia*, 443 U.S. 307 (1979) that the unanimous verdict against petitioner was sufficient to maintain his conviction for second degree murder when the evidence, viewed in a light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proven beyond a reasonable doubt. *Id.*, 673 So. 2d at 1073.

In the instant matter, petitioner ignores the basic legal premise that the fact-finder's role is to weigh credibility of witnesses; the Louisiana Third Circuit was correct that "the appellate court should not second-guess the credibility determinations of the trier of fact beyond the sufficiency evaluations under the Jackson standard of review." *Id.* (Citations omitted.) The Court further noted

"The jury weighed the respective credibilities of the witnesses and the circumstances of the offense. It returned a unanimous verdict of guilty." *Id.*, 673 So. 2d at 1074.

The Louisiana Third Circuit's ruling is consistent with decisions of this Honorable Court. *See Anderson v. City of Bessember City, North Carolina*, 470 U.S. 564, 565 (1985)("clearly erroneous" standard does not entitle reviewing court to reverse findings by trier of fact simply because it would have decided the case differently; when findings rest on credibility of witnesses, even greater deference is given.) *See also Rushen v. Spain*, 464 U.S. 114, 121 (1983)(..."state courts' determination about witness credibility and inferences to be drawn from the testimony were binding on the District Court and are binding on us.")

Review of petitioner's claims regarding his alleged insanity is not warranted.

CONCLUSION

Based upon the foregoing reasons, the State of Louisiana would respectfully request that this Honorable Court deny the instant petition for writ of certiorari to review the Louisiana Supreme Court's decision in *State of Louisiana v. Terry Campbell*, 661 So. 2d 1321 (La. 1995) and the Louisiana Court of Appeal, Third Circuit's decision in *State of Louisiana v. Terry Campbell*, 673 So. 2d 1061 (La. Ct. App. 3d Cir. 1996), *writ denied*, 685 So. 2d 140 (La.1997).

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General of Louisiana

KATHLEEN E. PETERSEN*
Assistant Attorney General

MARY ELLEN HUNLEY
Assistant Attorney General

APPENDIXES

LIST OF APPENDIXES

APPENDIX A

State Seal
Richard P. Ieyoub State of Louisiana
Attorney General Department of Justice
Criminal Division
Baton Rouge

P.O.Box 94095
Baton Rouge
LA.70804-9095
Telephone:
(504)342-7552
FAX:
(504)342-7893

April 18, 1997

P-97-04-564

Honorable Walter Lee
Clerk of Court, Evangeline Parish
P.O. Box 347
Ville Platte, Louisiana 70586

RE: State of Louisiana v. Terry Campbell

Dear Mr. Lee:

Pursuant to Article 680 et seq. Of the Louisiana Code of Criminal Procedure, Brent Coreil, District Attorney, 13th Judicial District, Parish of Evangeline, has been recused from any investigation or prosecution of the above captioned case and the case has been certified to me for appointment of a District Attorney Ad Hoc.

By virtue of the authority granted this office by Article 682 (as amended by Act 652 Regular Session 1972 Legislature), of the Code of Criminal Procedure, I hereby accept the

appointment of the court as District Attorney Ad Hoc in the above captioned matter. The Assistant Attorneys General assigned to the Criminal Division will function in the same manner as Assistant District Attorneys. This communication is your authority to enroll the Criminal Division of the Attorney General's Office as prosecutor of record in the captioned case. Kathleen Petersen, of my staff, will act as lead counsel in this case and will be your contact person with this office.

Additionally, please note that C.Cr.P. art. 683.1 authorizes reimbursement to the District Attorney Ad Hoc for the expenses incurred in the prosecution of recusal matters.

With kind personal regards, I am,

Sincerely,

RICHARD P. IEYOUB
ATTORNEY GENERAL

S/TIM SCREEN
TIM SCREEN
DIRECTOR,CRIMINAL DIVISION

cc: Hon.Preston N. Aucoin, District Judge
Hon. Brent Coreil, District Attorney

APPENDIX B

STATE OF LOUISIANA
VERSUS
TERRY CAMPBELL
CRIMINAL DOCKET NO. 45,690-F
13TH JUDICIAL DISTRICT COURT
EVANGELINE PARISH, LOUISIANA

****

MOTION TO RECUSE

TO THE HONORABLE, THE 13TH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EVANGELINE, STATE OF LOUISIANA:

NOW INTO COURT comes C. Brent Coreil, District Attorney in and for the Parish of Evangeline, State of Louisiana, through the undersigned, who with respect represents and informs the Court:

1.

That the office of the District Attorney, Parish of Evangeline, State of Louisiana, should be recused from the above captioned matter to avoid any appearance of impropriety.

2.

The Assistant District Attorney Raymond Lejeune, participated in providing a defense to **TERRY CAMPBELL** in the previous trial of this matter.

RESPECTFULLY SUBMITTED,
OFFICE OF THE DISTRICT ATTORNEY

BY: S/BRENT COREIL

C. BRENT COREIL
PARISH OF EVANGELINE
POST OFFICE DRAWER 780
VILLE PLATTE, LOUISIANA 70586
318-363-3438

ORDER

IT IS ORDERED that the District Attorney's Office for the Parish of Evangeline, State of Louisiana be recused from the above captioned matter and that the court hereby notifies the Attorney General of the State of Louisiana of this recusal in accordance with LSA - Code of Criminal Procedure Article 682.

Thus done at Ville Platte, Evangeline Parish, Louisiana, this 16th day of April, 1997.

S/PRESTON N. AUCOIN
PRESTON N. AUCOIN
DISTRICT JUDGE

APPENDIX C

State Seal
Richard P. Ieyoub State of Louisiana
Attorney General Department of Justice
Criminal Division
Baton Rouge

P.O.Box 94095
Baton Rouge
LA.70804-9095
Telephone:
(504)342-7552
FAX:
(504)342-7893

April 25, 1997

Honorable Kenneth deBlanc
Clerk, Louisiana Court of Appeal
Third Circuit
P.O. Box 3000
Lake Charles, LA. 70602

RE: *State of Louisiana v. Terry Campbell*
Docket No. Cr94-1140

ATTN: Roberta Burnett

Dear Mr. deBlanc:

Enclosed please find a true copy of the *Motion to Recuse* filed by the 13th Judicial District Attorney C. Brent Coreil in *State of Louisiana v. Terry Campbell*, Docket No. 45,690-F, Evangeline Parish. Please file the same into the appellate record filed under Docket No. CR94-1140 in your Court.

Also enclosed is a copy of the letter from Tim Screen, Director of the Louisiana Department of Justice, Criminal Division, appointing myself as the new prosecutor of

record. Defense counsel has filed a petition for certiorari in this matter with the United States Supreme Court.

If you have any questions, please do not hesitate to contact his office. With kind regards, I am

Sincerely,
S/Kathleen E. Petersen
Kathleen E. Petersen
Assistant Attorney General

cc/Dmitrc Burnes, Esq.

APPENDIX D

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

William K. Suter **Area Code 202**
Clerk of the Court **479-3011**

May 23, 1997

Brent Coreil, Esquire
District Attorney
P.O. Box Drawer 780
Ville Platte, LA 70586

Re: 96-1584 - Campbell, Terry v. Louisiana
Dear Mr. Coreil:

Although you office has waived the right to file a response to the petition for a writ of certiorari in the above case, the court nevertheless has directed this office to request that a response be filed.

Forty printed copies of your response, together with the proof of service thereof, should be filed on or before June 23, 1997.

Your attention is directed to the provisions of Rule 33 of the rules of this Court. Please note that the color of the cover of your brief should be orange.

Sincerely,
S/William K. Suter
William K. Suter,Clerk

CC: Richard P. Ieyoub, Esquire
Kathleen E. Petersen, Esquire
Richard V. Burnes, Esquire

APPENDIX E

EXCERPTS FROM RECORD

State Seal STATE OF LOUISIANA LOUISIANA
Edwin W. Edwards Department of Health Seal
Governor and Hospitals
Office of Mental Health
Feliciana Forensic Facility

Date Stamped/Apr 12 1:03 PM'93

April 6, 1993

Honorable Preston N. Aucoin, Judge
Thirteenth Judicial District Court
Parish of Evangeline
Ville Platte, Louisiana 70586

RE: CAMPBELL, TERRY
HOSPITAL NUMBER: 02,454
DOCKET NUMBER: 45-690-F

Dear Judge Aucoin:

Mr. Terry Campbell was admitted to Feliciana Forensic Facility on March 1, 1993 as not competent to proceed relative to a charge of Second Degree Murder. We are preparing to discharge him from this institution to the custody of the Evangeline Parish Sheriff upon receipt of your Order returning him for the hearing statutorily required to be held within thirty (30) days from your receipt of this notice.

Pursuant to Article 649, Louisiana Code of Criminal Procedure, we are informing you that, after comprehensive evaluation and treatment, Mr. Campbell in our opinion now

understands the proceedings against him and can assist his attorney in the defense.

To assist you in your decision, we are enclosing our reports in a packet which details the treatment of Mr. Campbell while a patient at the Feliciana Forensic Facility. We are also enclosing two (2) proposed ORDERS for your review to expedite this return for the required hearing; one, re-appointing the original Sanity Commission and the other scheduling the hearing without the re-appointment of a Sanity Commission (if the State and defense decide to accept our report).

Please note that pursuant to recent amendments to Article 649, additional mental examinations by the original Sanity Commission may no longer be required if the defense counsel and prosecutor stipulate to submit the matter on the basis of the attached reports.

R.75-A
HIGHWAY 10 * P.O.BOX 888 * JACKSON,
LOUISIANA 70748
PHONE:504/634-2651 * FAX:504/634-7302
"AN EQUAL OPPORTUNITY EMPLOYER"

APPENDIX E

Letter to Judge Aucoin
RE: Terry Campbell
Page 2

Should our participation at the hearing be necessary, the psychiatrist you may wish to subpoena to testify in this case is Dr. Richard Gibson.

If we can be of further assistance, please contact us.

Sincerely,
S/K.Beth Harris, MSW
K. Beth Harris, MSW
L. Mental Health Social Worker

S/David K. Winstead, MD
Daniel K. Winstead, M.D.
Clinical Director

S/Jerry Westmoreland
Jerry D. Westmoreland
Chief Executive Officer

KBH/DKW/JDW/spjxc:(sic)Bill Pucheu, District Attorney
J. Michael Small, Defense Attorney
William Cloyd, M.D., Sanity Commission Member
Charles Fontenot,M.D.,Sanity Commission Member
Hugh Collins,Ph.D.,Supreme Court Judicial Administrator

APPENDIX F

STATE OF LOUISIANA
VERSUS
TERRY CAMPBELL
CRIMINAL DOCKET NO. 45,690-F
13TH JUDICIAL DISTRICT COURT
EVANGELINE PARISH, LOUISIANA

JUDGMENT

This case came for hearing on the "MOTION TO SUPPRESS INCLUPATORY STATEMENTS" and on the "SUPPLEMENTAL MOTION TO SUPPRESS" filed by defendant, **TERRY CAMPBELL**, which hearing was held on December 2, 1993.

APPEARANCES: Defendant, **TERRY CAMPBELL**, and his attorney's, J. Michael Small, Jesse Hearin and Raymond LeJeune,appearing for J.Jake Fontenot;

and

The State of Louisiana, represented by Richard W. Vidrine, Assistant District Attorney;

For the reasons orally assigned in open court, after the hearing of this case:

IT IS ORDERED, ADJUDGED AND DECREED that the "MOTION TO SUPPRESS INCULPATORY STATEMENTS" and the "SUPPLEMENTAL MOTION TO SUPPRESS" filed by defendant, **TERRY CAMPBELL,** be and the same are hereby denied.

APPENDIX F

JUDGMENT rendered on December 2, 1993.

JUDGMENT read and signed on this 6th day of December, 1993, at Ville Platte, Evangeline Parish, Louisiana.

S/PRESTON N. AUCOIN
PRESTON N. AUCOIN
DISTRICT JUDGE

R.175

APPENDIX G

FIRST TRIAL, JANUARY 11, 1994
R. 545 - 546
Trial Judge: Honorable Preston Aucoin

BY THE COURT:

That you have requested. All right bring in the jury. The jury has returned after argument has been made out of their presence. Now, Ladies and Gentlemen of the jury, listen very carefully to what I am going to tell you. At the request of the defense counsel, with no objection from the State, I am going to explain to you why this warrant was issued with the provisions and conditions that it was issued. It was because it was an unusual arrest. The circumstances that made it unusual were that Mr. Terry Campbell was at the Cypress Hospital when I signed the warrant for the arrest and it was a precautionary measure since he was being arrested at the hospital I did not want the police persons, or the law officers, to question him at all and that is why I had appointed an attorney to represent him. Do you all understand that? Now, I will also tell you that that is out of the ordinary. It is not usually done. Okay? Thank you.

BY MR. SMALL, Counsel for Defendant:

Thank you, Your Honor.

BY THE COURT:

Certainly. You may proceed.

APPENDIX H

LOUISIANA REVISED STATUES CITED

La.R.S.14:30.1 Second degree murder

A. Second degree murder is the killing of a human being:
(1) When the offender has a specific intent to kill or to inflict great bodily harm; or

B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. *Added by Acts 1973, No. 111, § 1. Amended by Acts 1975, No. 380, § 1; Acts 1976, No. 657, § 2; Acts 1977, No. 121, § 1; Acts 1978, No. 796, § 1; Acts 1979, No. 74, § 1, eff. June 29, 1979; Acts 1987, No. 465, § 1; Acts 1987, No. 653, § 1; Acts 1993, No. 496, § 1.*

La.R.S. 14:31 Manslaughter

A. Manslaughter is:
(1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or

(2) A homicide committed, without any intent to cause death or great bodily harm.

(a) or attempted perpetration of any felony not enumerated in article 30 or 30.1, or of any intentional misdemeanor directly affecting the person; or
(b) When the offender is resisting lawful arrest by means, or in a manner, not inherently dangerous, and the circumstances are such that the killing would not be murder under Article 30 or 30.1.

B. Whoever commits manslaughter shall be imprisoned at hard labor for not more than forty years. However, if the victim was killed as a result of receiving a battery and was under the age of ten years, the offender shall be imprisoned at hard labor, without benefit of probation or suspension of sentence, for not less than ten years not more than forty years. *Amended by Acts 1973, No. 127, § 1; Acts 1991, No. 864, § 1; Acts 1992, No. 306, § 1; Acts 1994, 3rd Ex.Sess., No. 115, § 1.*

La.R.S. 15:114 Parish of Orleans; rotation and selection of grand jury; control of grand jury

Each judge of the criminal district court for the Parish of Orleans shall in rotation, select the grand jury for the Parish of Orleans. The order of rotation among the judges in the selection of the grand jury prevailing at the time this Section goes into effect shall be preserved and continued. The judge of the section of the criminal district court who shall have appointed said grand jury shall have control and instruction over the grand jury, exclusive of all other judges of the criminal district court, and such grand jury shall make all findings and returns in open court to said judge;

and in addition thereto may make reports and requests in open court as provided by law; provided that if the judge to whom the control of the grand jury shall belong shall not be from any cause in the actual discharge of his duties as judge, the judges of the criminal district court then present shall designate some other judge to impanel and instruct said grand jury, or to receive its returns and findings, as the case may be, and the judge so designated shall continue to act for the judge to whom the control of such grand jury shall belong until said last-mentioned judge shall return to the discharge of duties; provided, further, that the grand jury in office at the time of the adoption of this Section shall, until the expiration of that term of office, be under the control of the presiding judge of the section by whom it was selected and shall return all indictments and findings to said judge in open court. *Acts 1966, No. 311, § 2, eff. Jan. 1, 1967.*

C.Cr.P. Art. 412 Drawing grand jury venire and subpoena of veniremen; Orleans Parish

A. In Orleans Parish, upon order of the court, the commission shall draw indiscriminately and by lot from the general venire box the names of seventy-five qualified persons, who shall constitute the grand jury venire.

B. The commission shall prepare and certify a list containing the names so drawn, and the list shall be delivered to the judge who ordered the drawing.

C. The court may direct the jury commission to prepare subpoenas directed to the persons on the grand jury venire, ordering their appearance in court on the date set by the court for the selection of the grand jury, and the jury commission shall then cause the subpoenas to be served in accordance with the provisions of Article

404.1(B) or R.S. 15:112, as directed by the court. *Amended by Acts 1968, No. 141, § 2; Acts 1985, No. 769, § 1; Acts 1987, No. 281, § 1.*

C.Cr.P. Article 413 Method of impaneling of grand jury; selection of foreman

A. The grand jury shall consist of twelve persons plus a first and second alternate for a total of fourteen persons qualified to serve as jurors, selected or drawn from the grand jury venire.

B. In parishes other than Orleans, the court shall select one person from the grand jury venire to serve as foreman of the grand jury. The sheriff shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling vacancies as provided in Article 415.

C. In the parish of Orleans, the court shall select twelve persons plus a first and second alternate for a total of fourteen persons from the grand jury venire, who shall constitute the grand jury. The court shall thereupon select one of the jurors to serve as foreman.

D. The first and second alternates shall receive the charge as provided in Article 432 but shall not be sworn nor become members of the grand jury except as provided in Article 415. *Amended by Acts 1990, No. 47, § 1.*

C.Cr.P. Article 414 Time for impaneling grand juries; period of service

A. A grand jury shall be impaneled twice a year in each parish, except in the parish of Cameron in which at least

one grand jury shall be impaneled each year.

B. In parishes other than Orleans, the court shall fix the time at which a grand jury shall be impaneled, but no grand jury shall be impaneled for more than eight months, nor less than four months, except in the parish of Cameron in which the grand jury may be impaneled for a year.

C. In Orleans Parish, a grand jury venire shall be drawn by the jury commission on the date set by the presiding judge. On the next legal day following the drawing, the jury commission shall submit the grand jury venire to the presiding judge, who shall impanel the grand jury. A grand jury in Orleans Parish shall be impaneled on the first Wednesday of March and September of each year.

D. A grand jury shall remain in office until a succeeding grand jury is impaneled. A court may not discharge a grand jury or any of its members before the time for the impaneling of a new grand jury, except for legal cause. *Amended by Acts 1985, No. 675, § 1.*

C.Cr.P. Article 436 The foreman; rules of procedure

The foreman of the grand jury shall preside over all hearings. He may delegate duties to other grand jurors and may determine rules of procedure. A grand juror who objects to a rule of procedure made by the foreman may apply to the court for a determination of the matter.

C.Cr.P. Article 648 Procedure after determination of mental capacity or incapacity

A. The criminal prosecution shall be resumed unless the court determines by clear and convincing evidence that the defendant does not have the mental capacity to proceed.

APPENDIX H

C.Cr.P. Article 924 Application for post conviction relief

An application for post conviction relief is a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside.

"Custody" as used in this Title means detention or confinement, or probation or parole supervision, after sentence following conviction for the commission of an offense. *Added by Acts 980, No. 249, § 1, eff. Jan. 1, 1981.*

C.Cr.P. Article 930.8 Time limitations; exceptions; prejudicial delay

A. No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than three years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner established that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.